

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

**FILED**  
U. S. BANKRUPTCY COURT  
WESTERN DISTRICT OF N. C.

DEC 23 1993

In Re:

MICHELE M. FREES, d/b/a  
From the Heart, may also be known  
Michele M. Fries,

Debtor.

MICHELE M. FREES, (individually  
and as Trustee),

Plaintiff,

v.

JOHN GIBNEY, EDWARD GIBNEY,  
ELEANOR GIBNEY and STEPHEN SEGALL,

Defendants.

Case No. 91-10359 PARON GIBSON  
Chapter 11

Adversary Proceeding  
No. 91-1490

JUDGMENT ENTERED ON

12-23-93

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER**

This matter is before the court upon non-jury trial on the plaintiff's complaint to recover title and require turnover of approximately one acre of land on the island of St. John, U.S. Virgin Islands. The case was tried over a four day period before this court in Asheville, North Carolina. (In addition, the court was offered and read numerous depositions of witnesses who were not present at the trial). The case was thoroughly and skillfully presented by all counsel involved. After consideration of the evidence and the arguments of counsel, the court has concluded that the plaintiff is entitled to delivery of title to the subject property, for the reasons that follow:

### Findings of Fact

1. Plaintiff Frees' (hereinafter "Frees") complaint seeks a determination that plaintiff is the rightful owner of a tract of property described as 1-Q, Hawksnest, Estates Dennis Bay, St. John, U.S. Virgin Islands (hereinafter referred to as "1-Q" or the "St. John property").

### Parties

2. Frees is a citizen and resident of Henderson County, North Carolina. She was formerly married to defendant Stephen Segall (hereinafter "Segall"), but the marriage was dissolved by divorce. Frees is a debtor-in-possession in a Chapter 11 bankruptcy case in the United States Bankruptcy Court for the Western District of North Carolina, Case No. 91-10359.

3. Frees is trustee of a trust created by orders of the District Court for Henderson County, North Carolina, entered on October 27, 1989, and March 22, 1991. The beneficiaries of that trust are the seven (7) children of Michele M. Frees and Stephen Segall: Justin Shawn Segall and Kristina Dawn Segall (the children of Segall from a prior marriage), Amber Claire Segall (the child of the plaintiff from a prior marriage), and Blake Anthony Segall, Simone Michelle Segall, Chelsea Mary Segall and Stephen Joseph Segall (the children of Michele Frees and Stephen Segall).

4. Defendant John Gibney (hereinafter "Gibney") is a citizen and resident of St. John, U.S. Virgin Islands. He

appeared at trial, personally and through counsel, and defended the action.

5. Defendants Edward Gibney and Eleanor Gibney are citizens and residents of the U.S. Virgin Islands. They are the brother and sister of defendant John Gibney and are in the chain of title to the 1-Q property. Edward Gibney and Eleanor Gibney did not answer the complaint and default judgment was entered against them prior to the trial.

6. Defendant Stephen Segall is a citizen and resident of the State of Florida. He is the former husband of Frees. Segall did not answer the complaint and a default judgment was entered against him prior to the trial. At the time of trial Segall was incarcerated in the Dade County Jail, Miami, Florida.

#### The Witnesses

7. The court has had the opportunity to observe the witnesses' testimony and to evaluate their testimony based upon that observation, their interest in the outcome of the proceeding, their prior statements, actions and testimony, and in light of all the circumstances of the case. Based upon that, the court makes the following general findings about certain witnesses:

a. Michele M. Frees is wholly credible and the court accepts her testimony as true. She has been an active litigant and that has aggravated or alienated some others involved in the proceeding. But, throughout a number of years and in the face of hardship and threats, she has maintained her claim to ownership of 1-Q. Her claim and her

testimony have been consistent throughout and are supported by documentation and by the statements and actions of other witnesses. The court finds her testimony credible.

b. John Gibney's testimony is not believable. He testified and provided sworn statements in this proceeding on several occasions, and never told the same story twice. His testimony at trial was inconsistent with prior sworn statements and was enhanced by revelations that had been omitted from prior testimony. Gibney appeared to testify to whatever he believed would promote his immediate interest. His perception of what took place during the time he was using drugs is no doubt clouded by that use. The court finds that Gibney's testimony is not credible.

c. Stephen Segall "testified" only by a transcribed, unsworn statement and by deposition. His "testimony" appeared calculated to offer something to each side in an attempt to negotiate something for himself. Segall appears able to tell the truth only by accident. The court finds him not believable.

d. Douglas Stratton described himself as a "gonzo lawyer." It appeared throughout his representation of Gibney and Segall that he was willing to do anything his clients wanted done without questioning it in any way. He was a conduit for whatever fraud or falsehood Gibney and Segall asked him

to help perpetrate. His testimony in this proceeding followed that pattern. The court finds Stratton no more credible than Gibney and Segall.

e. Joy Gibney, Gibney's ex-wife, testified in support of Gibney's position. Her testimony sounded rehearsed. She used some of the same characterizations as Gibney, and she answered one question before it had been asked. Moreover, her story defied credulity. The court finds that Joy Gibney's testimony is not credible.

#### Background

8. Gibney is a native of St. John, U.S. Virgin Islands, who was described as a "Caribbean woodsman." Although he had limited formal education, the court found Gibney to be intelligent and articulate.

9. Together with his brother and sister, Gibney inherited approximately 50 acres of real property on St. John. The three Gibneys, on December 23, 1986, entered into a partition agreement dividing their property. Pursuant to this agreement Gibney received the property which included parcel 1-Q, a tract of about one acre. However, the partition agreement was not recorded in the Virgin Islands public registry, and there was some doubt about its legal effect as a title matter.

10. In the early 1980's, Gibney lived on his property in a tent with a woman who later became his wife, Joy Gibney. He was in the process of building a house by himself and had no regular

stream of income other than what he derived from occasional manual or custodial jobs.

11. Segall and Gibney met on St. John sometime around 1983. They became friends. At first, they visited periodically, developed a mutual affection for one another and used drugs together. Later, particularly after separation from their respective wives, Gibney and Segall ran together as self-described "bad boys," developed a close bond including a loosely-defined "code," and used drugs regularly. During the course of their relationship, Gibney and Segall: exchanged large amounts of money; executed agreements, deeds, court papers and other documents; travelled extensively together and separately; "worked" together and lived together for a period of time; were each indicted on criminal charges and supported each other in their respective proceedings; represented themselves as "partners" in attempting to sell other parcels of Gibney's St. John property to others (or in the apparent attempt to do so); were divorced by their respective wives; and had dealings with a variety of lawyers, real estate brokers and other "professionals" who represented them either individually, jointly or both (and at times where their interests conflicted).

12. Overlaid on the actions of Gibney and Segall is their drug use. Segall was alleged to have trafficked in drugs. (That issue is not before the court and no finding is made as to it). Gibney and Segall both regularly used drugs. Gibney became addicted to cocaine and used an ounce daily. He entered a drug

treatment program in Florida, but left it to join Segall and relapsed almost immediately; later entered another drug treatment program in California in early 1990, but again relapsed; and finally embarked on recovery from his addiction in Alcoholics Anonymous in January 1991; and, claims not to have used drugs since that time. Gibney's cocaine addiction may explain certain actions that otherwise might appear irrational, confused or curious. Otherwise, Gibney's efforts at recovery from his addiction are laudable, his drug addiction and drug use are no excuse -- legal or otherwise -- for any of his actions. The court finds that at all relevant times Gibney had full legal capacity to act and that his capacity was in no way affected or diminished as a legal matter by drug use or by coercion, manipulation or trickery by Segall or others.

#### Parties' Dealings

13. During the time that Segall and Frees were married, Gibney conveyed parcel 1-Q to Segall for valid consideration. Gibney executed an agreement to sell the property and executed a deed conveying the property. Edward and Eleanor Gibney also executed a deed conveying the parcel to Segall. Segall subsequently conveyed parcel a-Q to Frees. No formal closing or transfer of title in the Virgin Islands' registry ever took place.

14. There were three instruments in the chain of title from Gibney to Segall:

- a. March 25, 1988 agreement - On March 25, 1988, Gibney executed a written agreement to sell parcel 1-Q to Segall.
- b. July 12, 1988 deed - On July 12, 1988, Gibney executed and delivered a deed to parcel 1-Q to Segall.
- c. July 7, 1990 - On July 7, 1990, Edward Gibney and Eleanor Gibney executed the July 12, 1988 deed and delivered it to Segall.

15. Gibney signed and had notarized an "AGREEMENT" dated March 25, 1988, for the sale of parcel 1-Q to Segall. The agreement acknowledged a prior agreement for sale of the tract entered into in 1983 and recited that that agreement was "in good standing" and that "each party has performed all matters required of them under said agreement."

16. The March 25, 1988, agreement recited that \$47,500 had been paid for the property and that a balance of \$15,000 was due June 1, 1988. Frees testified, and the court finds, that the payment price and the payment schedule recited in the agreement were contrived; Segall paid Gibney \$150,000 for the property; Segall made the last payment by September 27, 1987. Gibney claimed that the final \$15,000 installment was not paid, but the court does not accept that. Gibney did not make such a claim prior to this litigation, and his actions over the five years since that payment was due belie that position. The court finds that Segall paid the full consideration of \$150,000 to Gibney for the 1-Q property.

17. The March 25, 1988, Agreement describes the property sold as follows:

Defined as a portion of 17-B Estate, Dennis Bay, Cruz Bay Quarters, St. John, V.I. Approximately, one (1) and half (1/2) acres of undeveloped land above the Peter Ernst mansion, abutting JOHN GIBNEY's residence home gate

While this description is lacking in certain detail, the court finds that it is what has come to be described as 1-Q, Estate Dennis Bay.

18. Later, Gibney had a survey and description of the tract prepared by his brother, defendant Edward Gibney, who is a registered land surveyor in the Virgin Islands. Segall requested and paid for the survey and land description. The survey map was attached to an October 27, 1989 Order of the North Carolina District Court, Henderson County, which was later recorded in the Virgin Islands public registry. The property as shown on that survey is described as follows:

Parcel 1Q Estate Dennis Bay,  
No. 17B Hawksnest Quarter,  
St. John, U.S. Virgin Islands,  
consisting of approximately 1.08 acre,  
as shown on P.W.D. Map No. D9-4330-T88

19. On July 12, 1988, Gibney executed a "WARRANTY DEED" to Segall. That deed describes the property as recited in paragraph 17 above. The deed acknowledges payment of full consideration. Gibney delivered this deed to Segall, who maintained it in his possession or control.

20. In August 1988, Segall discussed with Gibney changing Segall's name as Grantee to "The Segall Children's Trust." No new deed was executed, and that change was never effected.

21. Segall requested a Virgin Islands attorney, Kevin D'Amour, to examine the July 12, 1988 deed and determine what title existed for Segall, and what needed to be done to obtain "fee simple" title. D'Amour, after examination, recommended to Segall, to add the names of Gibney's brother and sister to the deed and obtain their signatures. At the request of Segall, D'Amour added the names of Edward Gibney and Eleanor Gibney to the July 12, 1988 deed with appropriate signatures and witness lines and notarization acknowledgments and delivered the modified deed to Segall to acquire the signatures, witnesses and notary acknowledgments needed. The original deed and modified deed contained Gibney's original signature with original witnesses (George Etheridge and Karl Hartman) and notarization (by Suzanne Grigg).

22. On July 7, 1990, Segall met with the defendants Edward Gibney and Eleanor Gibney, at Islandia Realty on St. John, U.S. Virgin Islands, and acquired their signatures. Edward and Eleanor Gibney signed the deed at Gibney's request. Two witnesses witnessed each signature and Inga Hiilivirta notarized the signatures, making a notary journal entry - as required by U.S. Virgin Islands law for notaries - of the transaction with a description of the grantors/grantee and property description, 1-Q, Estates Dennis Bay, U.S. Virgin Islands.

23. The court finds the modification of the July 12, 1988 deed to be an addition to it rather than any change in the original intent or effect of the deed. Gibney's conveyance to Segall was unchanged and unaffected. The modification simply added the conveyance to Segall of any interest that Edward or Eleanor Gibney may have had in parcel 1-Q.

24. On March 22, 1991, an order was entered in the North Carolina District Court, Henderson County, which adjudged and decreed that Segall had transferred all of his right, title, and interest in the 1-Q property to Frees (individually and as trustee of a children's trust created by previous Order dated October 27, 1989).

25. On March 7, 1991, the following documents were recorded in the U.S. Virgin Islands public registry: February 3, 1991, deed from Segall to Frees; March 22, 1991, order of North Carolina District Court; and March 25, 1988, agreement between Gibney and Segall.

26. Neither the July 12, 1988 deed (nor its 1990 modified version) was recorded in the U.S. Virgin Islands public registry.

27. The July 12, 1988, deed (as modified in 1990) apparently no longer exists. Gibney and attorney Douglas Stratton both testified at trial that Gibney tore up "the deed" in 1991 or 1992. Specifically, they testified that: Segall had delivered the deed to Stratton who was representing both Segall and Gibney at the time in connection with their dealings regarding other of Gibney's St. Johns property; Gibney saw the deed in a file

Stratton maintained; and, that Gibney tore up the deed in Stratton's office (outside of Segall's presence and without his knowledge). Whether this testimony is true is subject to serious doubt. In previous testimony both Gibney and Stratton had offered other explanations about the deed and failed to testify that it had been torn up -- even though the circumstances begged for an explanation. Gibney testified before the United States District Court in prior proceedings in this case that he had marked the deed "void" some time in 1988 and that it was in his or another of his attorneys' possession. Both Stratton and Gibney testified before the District Court, but neither said anything about the deed being torn up. Also, in his affidavit opposing summary judgment in this case (in which he was represented by Stratton), Gibney said he had voided the deed and returned Segall's payments to him. No mention was made of tearing up the deed. The court does not believe any of Gibney or Stratton's alternative explanations about destruction of the deed.

28. The court does not find it necessary to resolve exactly what happened to the deed because any "voiding," destruction or other act of control over it by Gibney was wrongful and ineffective to destroy his conveyance of title to Segall. The court has found that Gibney transferred his interest in and title to 1-Q to Segall for valid consideration by executing the July 12, 1988 deed and delivering it to Segall. The conveyance as between Gibney and Segall took place at that time, and any subsequent act

by Gibney (if it occurred) was wrongful and legally ineffective to affect the conveyance of or title to the property.

29. Gibney made statements and took actions that confirm his conveyance of the 1-Q property to Segall (and thence to Frees);

a. From August 1990 through February 1991 Gibney was party to negotiations with a Mr. Haub for sale of his St. John's property. This negotiation took place in correspondence through Gibney's and Segall's attorney, Douglas Stratton, and Haub's attorney, John Barline of Tacoma, Washington; and it included one meeting by Gibney and Segall with Barline in Tacoma. During the exchange of correspondence, Segall's deed to 1-Q was referenced and acknowledged. Gibney made no objection. Segall and Gibney negotiated prices, made representations of ownership, and even concocted a fraudulent third-party offer, all on the basis of Segall owning 1-Q. Gibney never objected to nor contested Segall's ownership of 1-Q at any time during this six month period, though it would have been in his interest to do so. Rather, his actions throughout the negotiations were consistent with Segall's ownership of 1-Q.

b. In September 1990, Gibney and Segall met together with Frees' domestic attorney, James Toms, in Hendersonville, North Carolina to discuss Gibney's and Segall's plans for the Virgin Islands property. Segall and Gibney prepared a

rough sketch of their various tracts on St. John and indicated where Segall's property was situated relative to property owned by Gibney. Gibney acknowledged Segall's ownership of 1-Q.

c. Gibney met with Frees and a friend in February 1990 on St. John and admitted to them his understanding that Frees owned the 1-Q property.

d. By letter postmarked March 23, 1990, Gibney wrote Frees a letter in which he apologized for "not resolving everything" for her previously and referred to his inability to convince his sister and brother to "do anything." He stated further "...but I can get you the documents to prove your ownership of the property if you need them.... On Jan 1, 1992 I can give you a clear title."

30. Gibney made no denial of Segall/Frees' right to parcel 1-Q until March 1991 when litigation was commenced. After Frees caused documents to be filed in the Virgin Islands public registry in March 1991 to establish her right to the 1-Q property, Gibney initiated in a quiet-title action in the Virgin Islands. The allegations of the complaint in the quiet-title action, verified by Gibney, are inconsistent with Gibney's sworn testimony in his affidavit opposing summary judgment in this case, his testimony before the United States District Court, and his testimony at the trial of this case. Stratton assisted Gibney in that suit. Segall defaulted, and was prepared to assist Gibney

in this suit. The court finds that this action is not inconsistent with Gibney's conveyance of 1-Q to Segall. Rather, Gibney's, Stratton's and Segall's statements and efforts in the quiet-title action were concocted and intended to deny wrongfully Frees of her right to title to parcel 1-Q.

31. At all times prior to March 1991 Segall's statements and actions consistently confirmed his ownership of parcel 1-Q -- including his statements and testimony in his domestic action with Frees and his conveyance of 1-Q to Frees. The court finds any statement or action on Segall's part to the contrary to be dishonest and an effort wrongfully to deprive Frees of the property. Segall has threatened Frees that if she did not cooperate with him about 1-Q he would make sure she could never claim title to the property. Segall's actions and statements since Frees' assertion of title by filing papers in the Virgin Islands public registry were efforts to carry out that threat and as such are not credible.

32. Joy Gibney testified that she had sent Gibney \$44,975 in February 1989. Gibney asserts that he used those funds to repay Segall for a note secured by parcel 1-Q. There is documentation of a transfer of about \$44,975 in February 1989. But, the court does not believe Gibney's assertion that this money was to repay Segall for a note secured by parcel 1-Q. The court finds Gibney's assertion not credible from its observation of Gibney and Joy Gibney and consideration of their story in the context of all the other evidence in the case. In addition: the sum is not

the amount that would have been required to repay Segall; repayment is inconsistent with other statements and actions of Gibney at that time and thereafter; there is no documentation or other support or corroboration for Gibney's assertion that the funds were used to repay a note encumbering parcel 1-Q; and Joy Gibney testified that the money was also for the purchase of antiques from Argentina. For all of these reasons the court finds that Gibney did not repay Segall for parcel 1-Q or otherwise return paid any part of the consideration for the property.

33. Frees' claim to ownership of 1-Q has been consistent from the beginning. Frees' statements and actions regarding the property over a number of years -- from her initial conversation with her domestic attorneys to conversations and correspondence with Gibney, Segall and others corroborate her claim to parcel 1-Q.

#### Conclusions of Law

34. The court finds and concludes that Frees (individually and as trustee) is the rightful owner of parcel 1-Q. Gibney was the owner of fee simple absolute title to 1-Q; he conveyed that interest to Segall; Edward Gibney and Eleanor Gibney conveyed any interest they had in parcel 1-Q to Segall; Segall thus became owner of fee simple absolute title to parcel 1-Q; Segall conveyed that fee simple absolute title to 1-Q to Frees (individually and as trustee).

35. There has been no rescission, revocation, repurchase or other activity effective to interfere with or defeat the chain of conveyances set out in paragraph 34.

36. Segall paid Gibney full valid consideration for parcel 1-Q. Although the recited amount of payments was fictitious, Segall paid full valid consideration for the property. The funds paid by Segall were for purchase of 1-Q and were not a loan to Gibney. Segall made all promised payments to Gibney. Gibney never returned or repaid any of the funds paid for 1-Q.

37. There was no fraud, misrepresentation, manipulation or coercion of Gibney by Segall or Frees. Gibney's actions were his own and were undertaken with full legal capacity.

38. Gibney executed the July 12, 1988 deed and delivered it to Segall. The description of 1-Q and other formalities of the deed are sufficient to constitute a valid and effective conveyance of title to 1-Q.

39. The 1990 modifications to the July 12, 1988 deed executed by Gibney did not affect its validity or legal effect. The modifications were additions that did not change the original intent or effect of the deed. The July 12, 1988 deed as modified in 1990 is effective to convey title to 1-Q from John Gibney, Edward Gibney and Eleanor Gibney to Segall.

40. Gibney's re-taking possession of the deed, marking the deed "void" or destroying the deed -- if any of those acts occurred -- did not affect Segall's (and thence Frees') interest

in 1-Q. Gibney's actions were wrongful; they are ineffective to destroy title once it was passed validly.

41. Segall conveyed fee simple absolute title to 1-Q to Frees (individually and as trustee) by deed dated February 3, 1990 and by Orders of the North Carolina District Court, Henderson County.

42. The transactions that occurred with respect to 1-Q do not comport with the filing requirements of the Virgin Islands as between the parties, however, the instruments were effective to convey title to Frees.

43. The right to purchase parcel 1-Q, pursuant to the March 25, 1988 agreement is property of the estate.

44. Frees (individually and as trustee) is entitled to specific performance of the March 25, 1988 agreement as successor to the interests of Segall.

45. Frees (as debtor-in-possession) is entitled to turnover of legal title to parcel 1-Q.

46. Frees (individually, as trustee, and as debtor-in-possession) is entitled to specific performance of whatever acts are required to establish her fee simple absolute title to parcel 1-Q in the Virgin Islands public registry.

47. Each of the foregoing "findings" and "conclusions" shall be deemed a "finding of fact" and a "conclusion of law" as is appropriate.

48. The court shall enter a separate Judgment contemporaneously with these Findings of Fact and Conclusions of Law.

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. Michele M. Frees (individually and as Trustee) is the rightful and lawful owner of that tract of real property on St. Johns, U.S. Virgin Islands, described as follows:

Parcel 1Q Estate Dennis Bay,  
No. 17B Hawksnest Quarter,  
St. John, U.S. Virgin Islands,  
consisting of approximately 1.08 acre,  
as shown on P.W.D. Map No. D9-4330-T88

2. Michele M. Frees, as successor in interest to that agreement dated March 25, 1988, for sale of the above described property and as debtor-in-possession, is entitled to specific performance of the agreement and to turnover of the described property.

3. Defendants John Gibney, Edward Gibney, Eleanor Gibney and Stephen Segall shall execute a deed and all other documents necessary formally to convey fee simple absolute title to the above-described property to Michele M. Frees, and shall timely cooperate in all acts required to close that conveyance and formal recordation thereof.

4. This court shall retain jurisdiction of this proceeding for the purpose of entering such additional orders as may be necessary to effect the relief awarded the plaintiff and to sanction defendants for any failure to comply with this Judgment of other orders.

This the 23rd day of December, 1993.

  
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George R. Hodges  
United States Bankruptcy Judge

DEC 23 1993

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

J. BARNES

In Re: )  
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Debtor. )

Case No. 91-10359  
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MICHELE M. FREES, (individually )  
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Plaintiff, )

Adversary Proceeding  
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v. )

JUDGMENT ENTERED ON

JOHN GIBNEY, EDWARD GIBNEY, )  
ELEANOR GIBNEY and STEPHEN SEGALL, )  
Defendants. )

12-22-93

JUDGMENT

In accordance with the Findings of Fact, Conclusions of Law and Order entered and filed contemporaneously herewith, it is hereby ORDERED, ADJUDGED AND DECREED that:

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This the 23rd day of December, 1993.

  
\_\_\_\_\_  
George R. Hodges  
United States Bankruptcy Judge